



CROSS-AGENCY TRANSITION TEAM WHITE PAPER

SUBJECT: Funding Lease and Rental Agreements

Issue

The NASA FY 2010 Appropriations Bill provides that NASA's Cross-Agency Support Funds (CASX) are limited to a one-year period of availability and will expire on September 30, 2010. This paper addresses the requirements for Funding Lease and Rental Agreements.

Lease and rental agreements funded under fiscal year appropriations (as opposed to revolving funds) must be restricted to the period of availability of the appropriation involved and must concern a bona fide need arising within such fiscal year availability.

In addition, the advance payment statute (31 U.S.C. 3324) has been consistently construed as applicable to lease or rental agreements as well as purchases, and applies with respect to both real and personal property. Thus, when the Government leases property, payments must be made "in arrears" unless the applicable appropriation act or other law provides an exemption from 31 U.S.C. 3324.

Since appropriations are made only for the bona fide needs of a particular fiscal year, and since a lease purporting to bind the Government for more than one fiscal year would necessarily include the needs of future years, such a lease would be contrary to the Antideficiency Act prohibition against contracting for any purpose in advance of appropriations made for such purpose.

A contractual arrangement on an annual basis with an option in the Government to renew from year to year was seen by GAO as the only way to accomplish the desired objective of contracting for a lease covering more than one fiscal year, again, restricting the agreement funded to the period of availability of the appropriation involved.

Guidance

Lease and rental agreements shall only be funded through September 30, 2010, if they are to be funded with PY 2010 CASX funds.